

In the Matter of:)
)
Business Meeting)
)
_____)

WEDNESDAY, MARCH 19, 2003

10:05 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairperson

James Boyd

Robert Pernell

Arthur H. Rosenfeld

Margaret J. Kim, Exhibit Officio

John L. Geesman

STAFF and CONSULTANTS PRESENT

Bob Therkelsen, Executive Director

Betty McCann, Secretariat

William Chamberlain, Chief Counsel

Jonathan Blee

Daryl Mills

David Maul

PUBLIC ADVISERS

Roberta Mendonca

ALSO PRESENT

Joseph M. Mattingly, Vice President,
Secretary and General Counsel

Stephen Yurek, General Counsel

Eric D. Tashman Esquire
Sidley Austin Brown & Wood, LLP

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P R O C E E D I N G S

10:05 a.m.

CHAIRPERSON KEESE: I call this meeting of the Energy Commission to order. Mr. Rosenfeld, would you lead us in the Pledge, please.

(Whereupon the Pledge of Allegiance was recited in unison.)

CHAIRPERSON KEESE: Thank you. Consent calendar, we'll take up item 1(a), item (b) has been moved.

COMMISSIONER ROSENFELD: I move the consent calendar.

COMMISSIONER BOYD: Seconded.

CHAIRPERSON KEESE: Motion, Rosenfeld, Second, Boyd. All in favor?

(Ayes.)

CHAIRPERSON KEESE: Opposed? Adopted four to nothing. I will mention at this time, just in case there is anybody in the audience, that Item 4, the renewable energy program and Item 5 on the renewable energy program have also been put over until the April 2nd meeting. And Item 7, and Item 8, Praxair and Iowa State have been moved over to a subsequent meeting.

1 With that, Item 2, Appliance Efficiency
2 Emergency Rulemaking, possible adoption of
3 regulations in response to litigation in air
4 conditioning and refrigeration instituted, et
5 cetera versus the CEC. Mr. Blees?

6 MR. BLEES: Thank you Mr. Chairman;
7 Commissioners. Last November 20th, the Energy
8 Commission instituted an emergency rulemaking
9 proceeding to consider changes to the Commissions'
10 Appliance Efficiency Regulations. And the
11 Commission delegated to the Efficiency Committee
12 the authority to conduct the rulemaking. And now
13 that the Presiding Member of that Committee has
14 arrived, perhaps I should ask, refer to him to
15 make any introductory remarks that he wants to,
16 or, should I just continue?

17 COMMISSIONER PERNELL: Thank you Mr.
18 Blees. I'm always willing to make to make
19 introductory remarks. Mr. Chairman, members, I
20 would just say first of all, Mr. Blees was
21 summarizing to give you a little bit of history on
22 this. But we have gone to great lengths to sit
23 down with the Association that represents the
24 appliance manufacturers. We have worked
25 extensively and I appreciate staff for working

1 with the Committee and we have called meetings
2 that weren't scheduled because the Committee
3 really wanted to understand the impacts.

4 And I will just say that our goal was
5 simple, to reduce wasteful, uneconomic,
6 inefficient and unnecessary consumption of energy
7 in California. And with the express terms before
8 you, we think we've accomplished that. And since
9 I have the mic here, Mr. Blees, let me just run
10 through the folks that I would like to thank, that
11 the Committee would like to thank that have
12 participated in this process.

13 And first of all and foremost here is
14 our counsel, Mr. Blees. We have Valerie Hall, who
15 is the Deputy Director of Efficiency, Mr. Martin,
16 Betty Chrisman, John Holland, Carolyn McCormack,
17 Debbie Frees and Chris Volts of our staff. And of
18 course our advisers, my adviser Rosella Shapiro
19 and Commissioner Rosenfeld's adviser, Mr. John
20 Wilson.

21 And with that, I'll let Mr. Blees brief
22 the board and summarize and then after questions
23 from the board, I will certainly want to make the
24 motion, Mr. Chairman.

25 CHAIRPERSON KEESE: Mr. Blees.

1 MR. BLEES: Thank you again. As
2 Commissioner indicated, this emergency rulemaking
3 proceeding was begun in response to a law suit
4 filed by four major appliance manufacturer trade
5 associations. It's in the Federal District Court
6 for the Eastern District of California, it's known
7 as Air Conditioning and Refrigeration Institute
8 versus Energy Commission.

9 The law suit, which of course is still
10 ongoing asserts that certain provisions in the
11 Commissions' Appliance Regulations, are preempted
12 by Federal Law and the Commission has contested
13 most of those assertions. And in the rulemaking
14 proceeding, the Commission Staff held a Public
15 Workshop on December 13th to discuss potential
16 amendments to the regulations and on January 16th
17 of this year, the Efficiency Committee published
18 proposed amendments, which are known as Express
19 Terms.

20 The Committee also published revised
21 proposed amendments a week ago, on March 12th.
22 Copies of the Express Terms Draft Adoption Order
23 and a notice of today's hearing were placed on the
24 Commissions website and copies of the March 12th
25 Express Terms and the Draft Adoption Order are in

1 your backup package. The proposed amendments are
2 designed primarily to clarify uncertainties in the
3 current regulations and, as Commission Pernell
4 indicated, to reduce burdens on manufacturers as
5 brought to the Commission attention in the law
6 suit.

7 The proposed amendments should
8 eliminated some of the contentions in the law
9 suit, but certainly not all of them. The
10 Committee was unwilling to completely eliminate
11 important parts of the regulations, which would
12 have been necessary to meet the demands of the
13 plaintiff.

14 The proposed amendments in the March
15 12th Express Terms are summarized in your Draft
16 Adoption Order. I don't think I need to go over
17 them here today. I do need to note, however, that
18 since the March 12th Express Terms were published
19 and provided to you, the Commission has received
20 several comments. And in response to those
21 proposing three additional amendments today.
22 These are all either additional clarifications or
23 simply corrections of errors.

24 First, in the definition small dot high
25 velocity system in Section 1602E, the term 100-

1 feet per minute should be changed to read 1000-
2 feet per minute.

3 Second, as I mentioned, the amendments
4 include an exception to the test method in the
5 efficiency standard requirements of water heaters
6 of under 20-gallon storage capacity. That
7 exception should also be applied to the
8 information submittal requirements to Table U in
9 Section 1606A3D.

10 And third, the term air flow direction
11 in Part E of Table U, which now applies to all
12 space heaters, should be limited to central
13 furnaces only.

14 In closing, the recommendation is that
15 you approve the Adoption Order that's in your
16 backup package, which in turn approves the March
17 12th Express Terms and the additional amendments
18 that I just mentioned today. It also makes
19 appropriate legal findings and continues the
20 delegation to the Efficiency Committee to submit
21 the amendments to the Office of Administrative Law
22 for final approval. Thank you.

23 CHAIRPERSON KEESE: Thank you Mr. Blees.
24 We have representatives from the industry that
25 wish to speak, anybody wish to go before them?

1 All right, Mr. Mattingly please.

2 MR. MATTINGLY: Thank you Mr. Chairman.

3 Good morning Commissioners. My name is Joe

4 Mattingly, here representing the Gas Appliance

5 Manufacturers Association, Inc. And we represent

6 residential, commercial and industrial space

7 heating and water heating equipment, as well as

8 some other products.

9 On the water heater issue, the Title 20
10 regulations would have regulated under 20-gallon
11 water heaters that are covered by the Federal Law.

12 And we perceived in your Express Terms a desire to
13 remove this issue from the pending litigation by
14 making exceptions from the standards and from the
15 testing requirements. And we pointed out to staff
16 to complete that effort it would be appropriate to
17 also include that exception from the Table U
18 Reporting Requirements, for so-called mini tank
19 electric water heaters. And as Mr. Blees has
20 mentioned, that was done.

21 And so I think that does complete that
22 effort and we very much appreciate your attempt to
23 narrow the issues and the litigation. We did have
24 just a few other comments on information reporting
25 requirements. And I did provide written comments

1 to the docket office. And in order to reduce
2 burden to manufacturers, you made some of the
3 reporting requirements voluntary. And we
4 recommended some other changes to make those
5 voluntary because we thought it would be
6 consistent with what you've done for the other
7 reporting requirements. But, in any event, again,
8 we appreciate the effort and the, I think the
9 success in removing this under 20-gallon water
10 heater issue from the litigation. Thank you.

11 CHAIRPERSON KEESE: Thank you. Mr.
12 Stephen Yurek.

13 MR. YUREK: Thank you Mr. Chairman,
14 Commissioners. I'm Stephen Yurek. I'm the
15 general Counsel with the Air Conditioning &
16 Refrigeration Institute, which represents the
17 manufacturers of air conditioners and refrigerant,
18 commercial refrigeration in the United States.

19 I'd like to start off and echo some of
20 the comments that Commissioner Pernell had started
21 at the beginning. And state our appreciation of
22 the work of the Commissioners, Rosenfeld and
23 Pernell and their staff in meeting with us to try
24 to address some of the concerns that were laid out
25 in the suit that we presented, filed last

1 November.

2 And you know, appreciate a lot of the
3 changes that were made in these Express Terms. As
4 mentioned by Mr. Blees, these provisions do away
5 with some of those issue, but did not do away with
6 all the issues that are the basis of our complaint
7 in the District Court. In particular, it didn't
8 deal with the issues with the preemption of filing
9 requirements, labeling requirements and pre-market
10 approval that are preempted by Federal Law.

11 To address these concerns, we have filed
12 in this record, and we did this at the Workshop
13 back in December, the complete record of the prior
14 rulemaking, plus all the documents that were filed
15 in the court case in the Federal District Court to
16 hopefully have those issues addressed as it
17 relates to preemption.

18 I think that in looking at these issues
19 and discussing them with the Commissioners, again
20 we appreciate their attempt to address our
21 concerns. It was always hopeful, I think on all
22 sides that hopefully we could have come to a
23 resolution where the case could be withdrawn, but
24 that isn't the case that we have today.

25 But again, I appreciate what they have

1 done in these proposed regulations and limiting
2 some of those issues. Thank you.

3 CHAIRPERSON KEESE: Thank you Sir. Any
4 other, anybody else in the audience care to speak
5 to this issue? Commissioner Pernell.

6 COMMISSIONER PERNELL: Thank you
7 Chairman Keese. With that, I would move adoption
8 of these amendments to the appliance regulations,
9 including the amendments that were mentioned by
10 Mr. Blees today.

11 COMMISSIONER ROSENFELD: Second.

12 CHAIRPERSON KEESE: Motion by
13 Commissioner Pernell; second by Commissioner
14 Rosenfeld. All in favor?

15 (Ayes.)

16 CHAIRPERSON KEESE: Opposed? Adopted
17 five to nothing. Thank you and thank you
18 gentleman.

19 COMMISSIONER PERNELL: Thank you
20 Chairman.

21 CHAIRPERSON KEESE: Item 3 revenue
22 bonds, Commission consideration and possible
23 approval for the Energy Commission to enter into
24 agreements necessary to complete the sale of a
25 revenue bond. I will note that Linda Chow is on

1 the telephone.

2 MS. CHOW: Good morning Commissioner.

3 CHAIRPERSON KEESE: Mr. Mills.

4 MR. MILLS: I'm Daryl Mills of the non-
5 residential office, with me today is Eric Tashman,
6 he is our bond counsel from Sidley Austin Brown &
7 Wood. For the Revenue Bond Transaction we are
8 asking for your approval today. Also in
9 attendance in the audience is Tom Dunfee from
10 LaMont Financial, he has been the financial
11 adviser to the Commission on this transaction.

12 The staff is seeking authorization from
13 the Commission to enter into agreements necessary
14 to complete the sale of revenue bonds through the
15 California Consumer Power and Conservation
16 Financing Authority. The par amount on the
17 Revenue Bonds as proposed today is \$27,000,265.
18 Your approval of this item today, we authorize the
19 Commission to begin the bond sale process with the
20 immediate release of the preliminary official
21 statement. Your approval would further authorize
22 the Executive Director to make any necessary non-
23 substantive changes to any and all documents
24 needed to complete the issuance and the sale of
25 the bonds.

1 The current schedule anticipates the
2 sale of the bonds to be completed and the proceeds
3 delivered to the Commission by April 11th of this
4 year. For the record I'd like to give you a
5 little background on this item. Proceeds from
6 these bonds will be used to fund the Energy
7 Conservation Assistance Account and be further
8 used to make loans to qualifying local public
9 agencies.

10 The Energy Commissions ECCA Account Loan
11 Program has been around since 1979, providing
12 loans to public and non-profit schools, hospitals,
13 public care facilities, as well as local
14 governments and special districts.

15 The loans help to finance the
16 installation of energy efficiency, self-generation
17 and renewable energy projects. Loans are repaid
18 from the energy savings of the projects that are
19 financed. Over 500 loans have been awarded
20 through the ECCA account with approximately
21 fifty-six percent of those going to schools and
22 colleges, thirty-three percent to local
23 governments and about twelve percent going to
24 hospitals, special districts and public care
25 institutions.

1 In 1995 the Commission sought and
2 received authority to use repayments from the ECCA
3 loans to provide the necessary revenue for a bond
4 sale. The proceeds of the revenue bond that was
5 to be sold in this fashion, must be used for the
6 purpose of making additional loans. The ability
7 to use revenue bonds to replenish our ECCA loan
8 account allows the Commission to make more loans
9 without the need to wait for loan repayments to
10 come in.

11 This system is potentially more
12 efficient, allowing the Commission to make more
13 loans with its limited funding over a shorter
14 period of time than would otherwise be the case.
15 As of January 1st of this year, as a result of SB-
16 1790, which was passed by the Legislature last
17 year, the California Consumer Power and
18 Conservation Financing Authority was added as a
19 bond authority that the Commission may use to
20 issue bonds.

21 At the November 20th business meeting of
22 this year, the Commission approved a memorandum of
23 understanding with the CPA, agreeing to use our
24 best efforts to issue the bond. I am pleased to
25 report today that we have worked through all of

1 the details for this bond transaction and are
2 recommending the Commission to authorize the
3 issuance of a revenue bond.

4 Staff has determined that there is
5 sufficient revenue stream from the loan repayments
6 from 93 specific existing loan in the ECCA account
7 to support a bond in the amount of \$27,265,000.
8 These 93 loans already in repayment or soon will
9 be in repayment and have a total outstanding
10 balance of \$32,304,149. The loan repayments from
11 these 93 loans provides excess coverage at a
12 minimum of a \$1.10 for every dollar that would be
13 owed throughout the life of the bonds.

14 In addition, the Energy Commission will
15 also set aside 6 million dollars in ECCA funds for
16 a debt service reserve account. That's
17 approximately equal to twenty percent of our
18 proposed maximum bond. This structure provides a
19 very strong bond proposal concept. The structure
20 has been tested by Goldman Sacks, our underwrite.
21 And they have confirmed it will allow up to a
22 twenty-eight percent default on our loans and it
23 would still make the buyers of the bonds whole.
24 Our actual default rate on this program is
25 essentially zero.

1 So you can see that we very
2 conservatively sized this bond and the backing and
3 security of that bond. Collectively, the assets,
4 which are the 93 pledged loans and the 6 million
5 dollars in the debt service reserve fund provide
6 the sole security for the proposed bond sale.

7 Many hours of staff work have gone into
8 the development of this. I would particularly
9 like to acknowledge the excellent support from the
10 CEC staff, including, in particular Elizabeth
11 Flores of our Legal Office, David Davenport and
12 Virginia Lew in the non-residential office, John
13 Butler in the Loans and Grants Office and Susan
14 Aaronhalt, Randy Roser and Mark Hutchinson in the
15 Budget Office. All have worked many hours on the
16 details of this bond transaction.

17 The staff work is supported by industry
18 professionals on the bond team that we put
19 together by the CPA, consisting of our bond
20 counsel at Sidley Austin Brown & Wood, Goldman
21 Sacks Group, their underwriter, including their
22 own counsel, Park Harrington and Sutcliff and our
23 financial adviser, firm of Lamont Financial. The
24 State Treasurer's Office is also involved and will
25 serve at the Bond Trustee on this transaction, is

1 also the agent of sale of the bonds.

2 The bond financial structure that this
3 team put together was presented to Moody's
4 Investor Service and has received a AA3 rating.
5 The Commission Staff is recommending approval of
6 this item and specifically approval of the current
7 version of several documents and the execution of
8 a resolution authorizing the issuance of the
9 bonds.

10 The resolution authorizes the Executive
11 Director, the Chair, or the Vice Chair to execute
12 the agreements. They may also make any changes as
13 may be required to all the necessary documents
14 with the advise of our Bond Counsel, as long as
15 the changes are non-substantive and do not change
16 the basic structure of the bond proposal.

17 The Executive Director, acting on behalf
18 of the Energy Commission will be authorized to
19 execute several agreements and other various
20 closing documents. The current version of each of
21 these principle agreements has been drafted and
22 reviewed by the entire bond team, including the
23 Commission Staff and our Financial Adviser.

24 All of the necessary documents and
25 agreements are nearly complete. And when

1 completed as closing must be signed by the
2 Executive Director. Those main documents include
3 a secured loan agreement, a master trust
4 agreement, a bond purchase agreement an official
5 statement, a tax certificate and agreement and a
6 continuing disclosure agreement.

7 The Staff is recommending approval of
8 this item today and upon approval, the Executive
9 Director will be authorized to release the
10 preliminary official statement, which will be
11 released in electronic form as early as this
12 afternoon. Staff anticipates that the bonds can
13 be sold and the proceeds delivered to the
14 Commission as early as April 11th. I'm available
15 to answer any of your questions. And Eric Tashman
16 is also here as well as Tom Dunfee from Lamont
17 Financial for any questions you might have.

18 CHAIRPERSON KEESE: Thank you, I do know
19 there is a couple of questions up here, but let's
20 hear first from Linda Chow. Ms. Chow.

21 (Thereupon some technical difficulty was
22 experienced with the phone line.)

23 CHAIRPERSON KEESE: Ms. Chow? All
24 right, we'll hold for a second and while you try
25 to find her we'll see if we have any questions up

1 here. Commissioner Geesman.

2 COMMISSIONER GEESMAN: I want to
3 compliment the staff and the financial team for
4 coming up with a very sophisticated and I think
5 successful structure on the issue. And the
6 measure of that is the very high quality credit
7 rating that Moody's has provided. And I realize
8 that this has involved some structuring that's
9 been novel to them and I think the whole team is
10 to be complimented for accomplishing that. And
11 hopefully, this will serve as a foundation for
12 future issuances in this program as well.

13 I'd also commend the Treasurer's Office
14 and the Power Authority for selecting the very
15 best of bond counsel in the electric field. Eric
16 and I go back a number of years and I'm pleased to
17 see you working on this, Eric.

18 I do have a couple of questions as it
19 relates to the preliminary official statement;
20 Section 6 of your resolution, has up adopting the
21 form of the current statement. And Eric, you and
22 I were bystanders, some number of years ago when
23 the Orange County Board of Supervisors had a
24 problem with some of the official statements that
25 they had adopted.

1 Could you tell us what our duty is today
2 in approving this form or the preliminary official
3 statement?

4 MR. TASHMAN: Thank you for your, can
5 you hear me? Which one?

6 REPORTER: Both of them.

7 MR. TASHMAN: Both of them, okay well,
8 now I feel like I'm in front of a press core.
9 Thank you Mr. Geesman for your complementary
10 introduction. Let me explain how the transaction
11 is structured and how I see your securities law
12 liability as Mr. Geesman has posed the question.

13 First, this transaction is a structured
14 transaction, meaning that the Energy Commission
15 has pledged a set of loans to repay the bonds. It
16 is not an obligation of the Energy Commission in
17 the sense that it's not an obligation payable from
18 any of the general resources of the Energy
19 Commission. The sole resource that bondholders
20 have against the Commission is limited to the
21 loans that have been pledged to secure repayment
22 of this transaction.

23 So in that sense, it is very different
24 from the type of transaction we saw in Orange
25 County, where the County's general resources were

1 the subject, were in fact, the security behind the
2 transactions that were investigated at the time of
3 the County's bankruptcy.

4 That's an important factor, but it does
5 not absolve the Commission of its obligations to
6 look at the transaction, to review and understand
7 the parameters of this transaction. And to make
8 inquiries with your staff to assure that staff has
9 independently investigated the facts that are
10 being presented in this official statement as
11 being representations of the Energy Commission.

12 As a general background to securities
13 law liability; generally speaking the bonds are
14 subject to the anti-fraud provisions of the
15 federal securities laws, meaning, if there is a
16 misstatement or omission in the official
17 statement, a private investor, or the Securities
18 and Exchange Commission could launch either an
19 investigation or a law suit based upon that
20 omission or misstatement.

21 The standard of conduct, which is
22 generally viewed as applicable to municipal
23 officials, as opposed to corporate officers, which
24 are subject to a very different and much higher
25 standard of conduct, is a standard of

1 recklessness. In other words, were the municipal
2 officials in this case, the Commissioners reckless
3 in their approval of the transaction, showing
4 blatant disregard for facts that should have been
5 in their possession to demonstrate, which would
6 have demonstrated that facts in the official
7 statement, statements in the official statement
8 were either untrue or omitted to state material
9 facts, which an investor would reasonably wanted
10 to see.

11 In order to address that standard of
12 conduct, my recommendation to you and my advice to
13 you is that you should have a general
14 understanding of the contents of this official
15 statement and you should have made reasonable
16 inquiry with staff that they have verified the
17 facts that are attributable to the Energy
18 Commission in this official statement. As Daryl
19 has already indicated, Staff has made such
20 inquiries and they can, are obviously free to
21 reaffirm that undertaking.

22 And we have worked with staff to assist
23 them in making the appropriate due diligence to
24 make sure that the facts as they describe the loan
25 portfolio and the loan program of the Commission

1 are fairly presented and accurately reflect the
2 state of the loan program.

3 But in the end, it's up to the
4 Commission to verify and to assure itself that
5 staff has made such inquiries, the staff, being
6 really the persons who have possession of the
7 facts necessary to verify the contents of the
8 official statement, have diligently verified those
9 facts. And based on that investigation, that
10 inquiry by yourselves, I believe that that would
11 satisfy your obligations, the obligations of the
12 Commissioners with respect to this official
13 statement.

14 I would add incidentally, that the
15 secured loan agreement provides as a contractual
16 matter that no Commissioner and no officer or
17 employee of the Commission would be personally
18 liable for repayment of the bonds. But, of
19 course, that contractual disclaimer is a matter of
20 contract law, it is different from a securities
21 law violation, which could give rise to your
22 liability under the federal securities laws.

23 COMMISSIONER GEESMAN: Mr. Chairman, I
24 think we've satisfied those requirements and I'm
25 prepared to move the resolution.

1 CHAIRPERSON KEESE: Motion Commissioner
2 Geesman.

3 COMMISSIONER BOYD: I second it.

4 CHAIRPERSON KEESE: Second, Commission
5 Boyd. I understand that Ms. Chow does not care to
6 speak to this issue, but was interested in
7 listening to this issue. Any other comments from
8 the audience? All in favor?

9 (Ayes.)

10 CHAIRPERSON KEESE: Opposed? Adopted
11 five to nothing. Thank you very much for this.
12 This is an exciting program for the Energy
13 Commission to get involved in thank you, thank you
14 all. Again, Item 4 and Item 5 are over. Item 6,
15 Cyberspace Technologies International Inc.
16 possible approval of Contract 70002003 for \$74,727
17 to provide temporary secretarial services as
18 needed to t Commission.

19 Both Item 6 and Item 9 were
20 competitively bid contracts and it's appropriate
21 for us to take them up. Continuation of
22 secretarial services for the organization, is that
23 what we have in front of us?

24 MR. MAUL: That's what you have in front
25 of you.

1 CHAIRPERSON KEESE: Do I hear a motion?

2 COMMISSIONER PERNELL: Before we do
3 that, I just have one question.

4 CHAIRPERSON KEESE: Commissioner
5 Pernell.

6 COMMISSIONER PERNELL: I intend to vote
7 for the motion, but I do have a question. And
8 it's more of a procedural one. My question is how
9 long has the Peters Shorthand Reporting been doing
10 this contract? Is that the one?

11 CHAIRPERSON KEESE: No, we're on
12 Cyberspace.

13 COMMISSIONER PERNELL: Are we on nine?

14 CHAIRPERSON KEESE: No, we're on six.

15 COMMISSIONER PERNELL: Oh, scratch that.

16 COMMISSIONER GEESMAN: I'll move six.

17 CHAIRPERSON KEESE: Motion, Commissioner
18 Geesman; second Commissioner Pernell. All in
19 favor?

20 (Ayes.)

21 CHAIRPERSON KEESE: Opposed? Adopted
22 five to nothing. Thank you. And then we move
23 immediately to item nine. Peters Shorthand
24 Reporting Corporation, possible approval of three
25 contract amendments to extend the term for one

1 year and provide verbatim transcripts of
2 workshops, hearings and other meetings by
3 retaining the services of trained court reporters.

4 MS. MCCANN: It's me your grilling, huh.
5 Actually, this is a three year contract. It was
6 competitively bid, all of the three of them, with
7 a year by year.

8 COMMISSIONER PERNELL: Okay, all three
9 years?

10 MS. MCCANN: Yes. All three years were
11 competitively bid under one bid with options for
12 each year being brought back each year to be
13 approved by the Commission. This is the end of
14 that third year option and it will be
15 competitively bid next year.

16 COMMISSIONER PERNELL: Okay, how -- my
17 question remains, which is how long has this
18 particular company been doing our recording?

19 MS. MCCANN: Three years.

20 COMMISSIONER PERNELL: Only three years.

21 MS. MCCANN: This will be the third
22 year.

23 COMMISSIONER PERNELL: Who did it prior
24 to this?

25 MS. MCCANN: Palmer's Reporting

1 Services.

2 COMMISSIONER PERNELL: Okay. And at the
3 end of the three years then it would go back out
4 to be competitively bid on a three year renewal
5 type contract?

6 MS. MCCANN: That is correct.

7 COMMISSIONER PERNELL: Okay. I have no
8 further questions Mr. Chairman. I would move the
9 item.

10 CHAIRPERSON KEESE: Moved Commissioner
11 Pernell.

12 COMMISSIONER ROSENFELD: I second.

13 CHAIRPERSON KEESE: Second, Commissioner
14 Rosenfeld. Any other questions? All in favor?

15 (Ayes.)

16 CHAIRPERSON KEESE: Opposed? Adopted
17 five to nothing.

18 MR. MCCANN: Thank you.

19 CHAIRPERSON KEESE: Thank you. The
20 minutes; the approving of minutes from March 5th,
21 2003.

22 COMMISSIONER ROSENFELD: I move the
23 minutes.

24 CHAIRPERSON KEESE: Motion Commissioner
25 Rosenfeld.

1 COMMISSIONER BOYD: Second.

2 CHAIRPERSON KEESE: Second Commissioner
3 Boyd. All in favor?

4 (Ayes.)

5 CHAIRMAN PERNELL: I abstain Mr.
6 Chairman. I wasn't.

7 CHAIRPERSON KEESE: Four to nothing with
8 Commissioner Pernell abstaining. Item 11,
9 Commission Committee and Oversight. Commissioner
10 Geesman.

11 COMMISSIONER GEESMAN: We have a slight
12 re-arrangement of responsibilities. It's focused
13 on the Renewables Committee.

14 This would transfer responsibility for
15 the Company's DG Program and implementation of the
16 DG Strategic Plan for the Siting Committee to the
17 Renewables Committee hopefully in preparation of a
18 joint effort that we may initiate with the Public
19 Utilities Commission in the DG subject area. It
20 would also clarify that the Renewables Committee
21 has responsibility for directing our collaborative
22 effort with the PUC on the renewable portfolio
23 standard.

24 CHAIRPERSON KEESE: Does everybody
25 understand what we're doing here? We're leaving

1 the Committees the way that they are. We're
2 switching a responsibility that currently under
3 Commissioner Geesman's Siting Committee to being
4 under Commissioner Geesman's Renewables Committee.
5 And counsel is indicated that this is an
6 appropriate, this minor change is appropriate.

7 MR. CHAMBERLAIN: Yes, it's a matter of
8 internal organization.

9 COMMISSIONER GEESMAN: Thank you.

10 COMMISSIONER ROSENFELD: Does this need
11 a vote?

12 CHAIRPERSON KEESE: Well, I think it
13 does need a vote in one form or another,
14 Commissioner Geesman --

15 COMMISSIONER GEESMAN: I'll move it as
16 the sponsoring party.

17 MR. CHAMBERLAIN: Basically you're
18 amending your resolution that establishes the
19 Committee structure.

20 CHAIRPERSON KEESE: Amending the
21 previous order.

22 COMMISSIONER BOYD: I'll second the
23 motion.

24 CHAIRPERSON KEESE: So we have motion,
25 Commissioner Geesman; second, Commissioner Boyd.

1 Any further discussion? All in favor?

2 (Ayes.)

3 CHAIRPERSON KEESE: Opposed? Adopted
4 five to nothing. Do we have anything else under
5 Commission Committee in Oversight? I will just
6 say that I believe that our preliminary session
7 with the PUC and the Power Authority was very
8 successful and I think you all for your
9 participation in that activity. We had, whether
10 you know it or not, Mary Nichols had planned to be
11 there, but a plane delay caused her to miss the
12 event.

13 I think it was a very good start to our
14 joint activities with the Public Utilities
15 Commission and the Power Authority. Chief
16 Counsel's report?

17 MR. CHAMBERLAIN: Yes Mr. Chairman, as
18 I've reported to you in previous meetings, the
19 Court of Appeal decision in the Metcalf case is
20 now final. We understand that a petition for
21 hearing in the Supreme Court has been filed on
22 Monday and I believe that that's being faxed to
23 our office this morning, so I have work to do
24 immediately after this meeting.

25 COMMISSIONER PERNELL: Seems to never

1 end, Mr. Chamberlain.

2 CHAIRPERSON KEESE: Executive Director's
3 Report.

4 EXECUTIVE DIRECTOR THERKELSEN: Three
5 quick things Commissioners, as Chairman Keese
6 mentioned, the joint meeting was a success, in
7 fact feedback I've been getting from a number of
8 people, both at the Capitol and the Governor's
9 Office and in the outside world have indicated
10 what a fantastic step forward they thought that
11 that was and appreciated the comments made by you
12 and the other folks that were present in the room.

13 The staff has gotten together. We're
14 putting together a summary of the comments, or
15 getting a summary of the comments that were made
16 and we will be providing that to you shortly.
17 We're also putting together our thoughts based on
18 the comments on potential modifications to the
19 action plan.

20 And the third thing we're doing is re-
21 looking at the matrix. We had provided you a
22 draft of the matrix and have questions about
23 whether that is the most appropriate device to
24 communicate the steps to implement the specific
25 actions. So that's something we will be looking

1 at in terms of alternatives on how to actually
2 implement the actions in the action plan. And
3 these are discussions that Laura Doll, Barbara
4 Hale and I have had on the subject.

5 Secondly with respect to our budget, we
6 had our first budget hearing last week, actually
7 it was this week and I think that went very well.
8 Our next hearing is on May 1st with the Senate,
9 and we expect between now and then we will be
10 getting some specific questions from the Senate
11 Budget Committee staff that we will have to
12 respond to and we will keep you informed in terms
13 of what those are.

14 The last thing that I had to mention
15 was, is as you are all aware the Governor has
16 requested us to put together a report in terms of
17 gasoline, diesel and natural gas prices and what
18 has been going on in that area. Our proposal
19 right now, or requirement is to submit that to the
20 Governor's Office by March 28th and we will have a
21 draft of that for you to look at prior to that.

22 CHAIRPERSON KEESE: Commissioner
23 Geesman.

24 COMMISSIONER GEESMAN: I wonder on the
25 subject of that report and having looked at the

1 request made in the Governor's letter whether you
2 and the Legal Office could provide us with some
3 sense of exactly what standard of price
4 manipulation is relevant for us to be looking at.
5 Rather than a uncalibrated, emotional, qualitative
6 assessment of, is it happening or not.

7 If we could get some guidance as to
8 statutory or regulatory or court decision
9 articulated standards, I think it would be helpful
10 in focusing this discussion.

11 MR. CHAMBERLAIN: I don't have a problem
12 providing that.

13 CHAIRPERSON KEESE: Well, we'll give you
14 some time, unless you want to shoot from the hip.

15 MR. CHAMBERLAIN: That may be a tall
16 order between now and 28th, but we'll do our best.

17 CHAIRPERSON KEESE: I would hope Mr.
18 Chamberlain, we can have it Monday.

19 MR. CHAMBERLAIN: We'll do our best.

20 CHAIRPERSON KEESE: We're anticipating,
21 we're requesting a staff draft by Monday. It
22 would be nice to integrate the two. This is a
23 complex issue. Mr. Therkelsen, I do have one
24 question. The Assembly Committee held its
25 deliberations as a sub-committee of an

1 informational nature essentially, do we have any
2 idea -- are they going to take a vote?

3 EXECUTIVE DIRECTOR THERKELSEN: At some
4 juncture yes, the sub-committee will reconvene and
5 take some kind of a vote to pass on a specific
6 recommendation on the -- budget committee as a
7 whole. I don't know when that is going to occur,
8 that has not been scheduled yet.

9 CHAIRPERSON KEESE: Are they -- is this
10 typical that they're taking most everything under
11 submission like this and dealing with them all
12 together, or are they taking up other agencies and
13 approving their budgets?

14 EXECUTIVE DIRECTOR THERKELSEN: No, what
15 they're doing, they're doing a similar process
16 with the other agencies. Chief Deputy Directors
17 meeting yesterday, the other agencies were talking
18 about the fact the they were going through a very
19 similar process, sort of an overview. They felt
20 it was more of an education of the committee of
21 the different agencies and what their
22 responsibilities were.

23 There weren't any specific actions at
24 those other budget hearings on specific agencies.
25 It was more of a presentation. The comments from

1 the staff were after the committee or sub-
2 committee has listened to all of this, they will
3 get back together and perhaps have some additional
4 questions for us and the other agencies. And then
5 they will pass forward their recommendation.

6 CHAIRPERSON KEESE: Thank you. And I'll
7 just mention for the benefit of the Commissioners
8 here, that staff and Mr. Therkelsen in particular
9 were congratulated on the depth of their
10 presentation and their responsiveness to the
11 questions that had been posed by the committee.
12 And having seen a couple of the other
13 presentations I can appreciate why the staff felt
14 our presentation was as good as it was. Thank
15 you.

16 COMMISSIONER PERNELL: I think you stole
17 my thunder. As you were at that budget hearing
18 and so was I and I wanted to comment and
19 congratulate Mr. Therkelsen for his thorough
20 explanations. And as I walked the halls over
21 there, some of the comments were that, you know,
22 where did you get this guy from, he knows
23 everything. So I am not saying that to embarrass
24 you in any way, but I would just echo what the
25 Chairman has said, that I thought that the staff,

1 and particularly you and your explanations and
2 walking them through our packet did an excellent
3 job. So I wanted to just echo the Chairman's
4 congratulations to you and to staff for that.

5 The other thing I would mention on the
6 joint meeting that we had, Mr. Chairman, is having
7 drank three cups of coffee I would hope that we
8 have a break a lot faster than two and one half
9 hours. But I thought that it was a great meeting.
10 We as a Commissioners both with the PUC, the CPA
11 and ourselves listened intensely to the comments.
12 And I thought they were very substantive. And it
13 wasn't emotion, but they actually had some
14 substantive things. So I would hope that as we do
15 our summation of that meeting that it be stated in
16 some way that the comments were substantive. And
17 those are the types of things I think that will
18 allow the policy makers to make policy decisions
19 as we go forward.

20 CHAIRPERSON KEESE: Thank you. Public
21 Adviser's Report.

22 MS. MENDONCA: Thank you Chairman Keese.
23 I have nothing specific this morning.

24 CHAIRPERSON KEESE: Okay, public
25 comment? Seeing none, this meeting is adjourned.

1 Thank you.

2 (Whereupon, at 10:50 a.m., the meeting
3 was ajourned.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of March, 2003.

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